

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

X

KIM MARIE VESCOVA and LINA AHMEE  
WHITEHILL,

Plaintiffs,

-against-

SOUTHWEST SECURITIES, INC.,  
SOUTHWEST SECURITIES GROUP, INC.,  
BROKERS TRANSACTION SERVICES, INC.,  
ROBERT DENENBERG, SUE H. PEDEN,  
STEVE BURKS, MICHAEL ASPLER, ROBERT  
MITCHELL, MARK KERN, their Principals,  
Officers, Agents, Managers and Supervisors,  
individually and as aiders and abettors, and as  
employers,

Defendants.

X

APPEARANCES:

**SOLOTOFF & SOLOTOFF**  
BY: LAWRENCE SOLOTOFF, ESQ.  
Attorneys for Plaintiffs  
P.O. Box 4686  
Great Neck, New York 11023

**SONNENSCHEIN NATH & ROSENTHAL LLP**  
BY: ARTHUR H. RUEGGER, ESQ.  
Attorneys for Southwest Defendants  
1221 Avenue of the Americas  
New York, New York 10020

**MICHAEL ASPLER**  
Defendant Pro Se  
20 Emerald Lane  
Huntington Station, New York 11746

**ROBERT MITCHELL**  
Defendant Pro Se  
70-86 66<sup>th</sup> Street  
Glendale, New York 11385

**MEMORANDUM AND ORDER**  
**CV 99-6257**

(Wexler, J.)

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y

★ OCT 28 2005 ★

**LONG ISLAND OFFICE**

MARK KERN  
Defendant Pro Se  
762 NW 89<sup>th</sup> Avenue  
Plantation, Florida 33324

WEXLER, District Judge

Plaintiffs Kim Marie Vescova ("Vescova") and Lina Ahmee Whitehill ("Whitehill") brought this action against defendants Southwest Securities, Inc. ("SWSI"), Southwest Securities Group, Inc. ("SWSG"), Brokers Transaction Services, Inc. ("BTS"), Robert Denenberg ("Denenberg"), Sue H. Peden ("Peden"), Steve Burks ("Burks"), Michael Aspler ("Aspler"), Robert Mitchell ("Mitchell"), and Mark Kern ("Kern"). Plaintiffs claimed that they suffered sexually hostile work environment and retaliation in violation of Title VII of the Civil Rights Act of 1964 and the New York Human Rights Law, and they asserted various other federal and state law claims. This action was stayed and closed administratively pending arbitration of Vescova's claims. The arbitration has been completed. Before the Court are plaintiffs' motions to reopen the action and for other relief, and Vescova's motion to confirm the arbitration award.

#### I. BACKGROUND

By Stipulation and Order entered January 10, 2003, the parties agreed to arbitrate Vescova's claims through the National Association of Securities Dealers ("NASD") as against SWSI, SWSG, and BTS (collectively, the Southwest Defendants), and Aspler, Mitchell, and Kern; and Vescova dismissed her claims against Denenberg, Peden, and Burks. In addition, the parties agreed to stay Whitehill's claims pending resolution of Vescova's arbitration. On October 28, 2004, after eight days of arbitration, the NASD issued an award in Vescova's favor. Thereafter, Vescova settled with the Southwest Defendants and Aspler. Vescova and Whitehill

now move to reopen this action, sever Whitehill's claims, and enter an order consenting to magistrate judge jurisdiction over Whitehill's claims. Vescova also moves to confirm the arbitration award against Kern and Mitchell. Whitehill notes that she has dismissed her claims against Kern and Mitchell. Neither Kern nor Mitchell has submitted any papers in opposition to the motion to confirm.

As relevant here, the NASD found that Vescova was physically assaulted and verbally abused by Kern and Mitchell. The NASD held Kern liable to Vescova for \$25,000 for lack of supervision, physical assault and verbal abuse, and intentional infliction of emotional distress; and the NASD held Mitchell liable to Vescova for \$25,000 for physical assault and verbal abuse and intentional infliction of emotional distress.

## II. DISCUSSION

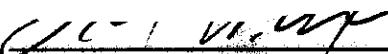
The grounds for refusing to confirm or for vacating an arbitration award are very limited. "A party petitioning a federal court to vacate an arbitral award bears the heavy burden of showing that the award falls within a very narrow set of circumstances delineated by statute and case law." Dufco Int'l Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 388 (2d Cir. 2003). The Federal Arbitration Act ("FAA") provides certain grounds upon which a federal court may vacate an arbitral award such as "corruption, fraud, or some other impropriety on the part of the arbitrators." Id.; see 9 U.S.C. § 10(a). Beyond the grounds explicitly provided for by FAA § 10(a), there is the well-recognized judicially-created doctrine that an arbitral award may be vacated when it exhibits a "manifest disregard of the law." Wallace v. Buttar, 378 F.3d 182, 189 (2d Cir. 2004); Goldman v. Architectural Iron Co., 306 F.3d 1214, 1216 (2d Cir. 2002).

Upon consideration of the record, in light of these principles, the motion to confirm is granted as against Kern and Mitchell, as the NASD arbitration award does not exhibit a manifest disregard of the law, and there is no indication that Kern or Mitchell was denied an unbiased and fundamentally fair hearing. Accordingly, Vescova's motion to confirm the NASD arbitration award as against Kern and Mitchell is granted. Whitehill's claims are severed and, given the remaining parties' consent to jurisdiction before a magistrate judge, the Court will endorse the order consenting to magistrate judge jurisdiction.

### III. CONCLUSION

Based on the above, Vescova's motion to confirm the NASD arbitration award as against Kern and Mitchell is granted. Whitehill's claims are severed, and her action will be assigned to a magistrate judge for all purposes. The Clerk of Court is directed to reopen the file in this action.

SO ORDERED.

  
LEONARD D. WEXLER  
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York  
October 28, 2005